



REPUBLIC OF KENYA



Gathatha Farmers Company Ltd v Chemtingei & 3 others; Kaitet Tea Estates (1977) Limited & another (Interested Parties) (Environment & Land Case 9 of 2023) [2023] KEELC 21986 (KLR) (4 December 2023) (Ruling)

Neutral citation: [2023] KEELC 21986 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KITALE
ENVIRONMENT & LAND CASE 9 OF 2023**

**FO NYAGAKA, J
DECEMBER 4, 2023**

**[FORMERLY ELDORET HIGH COURT CIVIL SUIT NO. 113 OF 1987
BROUGHT TO KITALE HIGH COURT REGISTRY OR ORDER OF HON.
JUSTICE S. M. MUKETI JUDGE IN KITALE HIGH COURT CIVIL CASE
NO. 57 OF 2011 ISSUED ON 20TH DECEMBER, 2011 AT KITALE (SIC)]**

BETWEEN

GATHATHA FARMERS COMPANY LTD PLAINTIFF

AND

SIMATWA CHEMTINGEI 1ST DEFENDANT

ODUORI CHONGORE 2ND DEFENDANT

THE ESTATE OF OKIRO OKOYO 3RD DEFENDANT

OTIENO OKIRO 4TH DEFENDANT

AND

KAITET TEA ESTATES (1977) LIMITED INTERESTED PARTY

ENDEBESS ESTATE PRIMARY SCHOOL INTERESTED PARTY



RULING

1. If this was to be a sermon, the Bible verses, Jeremiah 5:21; Mathew 13: 14-17 or Mathew 23: 17 would fit the delivery of the message to the Applicant. The last of the verse puts even more painfully explicit as follows:-

“O Jerusalem, Jerusalem, thou that killest the prophets, and stonest them which are sent unto thee, how often would I have gathered thy children together, even as a hen gathereth her chickens under her wings, and ye would not!”

2. I would compare the Applicant herein to the Jewish Jerusalem that killed innocent prophets so much and often to the extent that it would not even notice that it was about to commit the egregious act against its own Saviour: the Son of God. This is because, as many times as the Applicant herein has appeared before me, I have taken a lot of judicial time to advise him that he seems not to be understanding how to draft and even orally pray for what he wants, and that the documents he has filed before, which he admitted on oath, on 20/11/2023, that he did not understand the entire content, are so badly drawn that they are hardly helpful to him.
3. Oh, Peter N. Simatwa, Peter N. Simatwa! You who wants this Judge to recuse itself from a matter that you are not even a party yet, at least not for now, if ever, and keeps accusing of the Judge of things he has not done and which accusation relates to proceedings you were not party to, how often or many times have I told you that you seek proper legal advice but you would not act on my advice? Instead, by drafting the instant Application, you went back to the same pleadings whose most parts you renounced on oath on 20/11/2023 and said all you did not understand the English language they were written in: that you only understood Kiswahili, and even then, only spoken! That one Mr. Wilfred Ogutu drafted everything and only called on you to append your signature thereon! Even this undated document which you handed over to Court upon signing it in open Court on the 20/11/2023 speaks volumes of how you have contradicted yourself very extensively in regard to what you swore on that date. This document by which you say you want the Court to recuse itself yet you keep saying verbally whenever asked, except once, that the Court recuses itself. As to why you always indicate that you heard the court use the term “quack”. How or the context, you do not know, whom the court referred to you say you do not know.
4. See now you even commit an abuse of the process of the Court only a week after you have been given a date for the Ruling on whether you will be an interested party, among other prayers! And whether by design and yourself or through your trusted ‘agent’ you have committed acts which border on criminality by swearing (an Affidavit) again contrary to the matters you stated on oath in open Court on 20/11/2023!
5. Anyway, while this matter was pending the delivery of a Ruling on the Application dated 27/10/2023 which was brought under certificate of urgency, the Applicant in the said application brought another one dated 27/10/2023. It is worth of note that among the prayers the earlier application sought were that the Applicant be enjoined an Interested Party. That prayer is yet to be granted or refused: the Ruling thereon is due on 22/01/2024.
6. Now I have before me an Application dated the same date as the earlier one: the 27/10/2023. It is supported by an Affidavit purported to be sworn by the same deponent as the one who swore the Application pending for Ruling as I stated above. What is even more disturbing is that the Supporting Affidavit purported to be sworn on 27/10/2023 has the same content as the earlier one except that the



latter has been adjusted by adding into the paragraphs of the one presented before Court in the earlier one some more paragraphs to include what this applicant intended to include for the purpose of the latter Application.

7. I state so because in the additional paragraphs the deponent deposes to facts on events which took place on 22/11/2023, almost a month after, by virtue of the annexures which are purporting to be an Application and “consent to making of grant” which took place that date. They purport to have been pursuant to an oath taken before one Aggrey Kidiavai Advocate, at least as per the superimposed stamp and signature of the said Advocate. Additionally, the signature and stamp of the Commissioner for Oaths on the latter Affidavit is exactly on the same position, with precision, as they were affixed on the earlier Affidavit sworn the same date (of 27/10/2023).
8. This Court has carefully scrutinized the Application, especially the adjustments in terms of additions or alterations to the Affidavit and Application but which purport to be of the same date. I am of the opinion that there are serious cybercrime offences and others such as uttering false documents that have been committed during the drafting and presentation for filing of the latter application and this issue needs to be reported to the Office of the Director of Public Prosecutions. For instance, by modifying an oath or document to purport it to have been properly made, by truncating documents that contain Advocates’ signatures and stamps and superimposing on documents and purporting to have been made by the Advocates and then presenting it to Court as appears on all the documents purported to be annexures, among others.
9. The Court has looked keenly and very critically at the documents that were emailed into the Court on 23/11/2023 at 2:01 PM (eleven days ago), through the email, ugutualfred@gmail.com which is the email address of Wilfred Ogutu, the heading, at pages 6 and 7 of 60 pages, 16 and 17 of 60, and 30 and 31 of 60 is an exact replica of pages the heading that was as he Application that he emailed to Court on 31/10/2023 at 3:11 PM, the signature of Peter M. N. Simatwa on the Certificate of Urgency (see page 9 of 60), the Grounds in Support of the Application (see page 23 of 60) and the Supporting Affidavit (see page 39 of 60) is a mere superimposition.
10. Worse and more appalling is that the purported Commissioner for Oaths stamp and signature are also an imposition over the document. What I am stating is that a clear analysis of the document at that point reveals that the stamp and signature of Advocate Amos Kiprop Songok as Commissioner for Oaths is not in the original: it is a truncation of an initial signature and stamp of the said Advocate and overlaying (overwriting/ placing) it on the said purported Affidavit: the document has a rectangular greyish colour in the background demarcating (or enclosing) the area around the signature and stamp. There is no original document that was ever scanned and filed in the form of an Affidavit.
11. It is strange that the same feature is the feature that is on the Affidavit which was filed on 01/11/2023. For that reason, the Court is of the opinion that the Affidavit herein was not properly Commissioned: that the deponent never appeared before the said Commissioner for Oaths to take the oath over what he purports to say.
12. Additionally, the said Advocate Mr. Aggrey Kidiavai of Kitale and Mr. Amos K. Songok Advocate of Eldoret should be informed by the Deputy Registrar of this Court, through service of this Ruling and copies of the two Affidavits sworn by Peter Simatwa in this matter on the same date but one has 59 paragraphs and the other 35 that cybercrimes and other offences are suspected to have been committed herein through use of their documents and signatures and they ought to act and report to this Court on or 22/01/2024 the steps they took regarding the dirty tricks that were played herein using their signatures and Commissioning and Certification stamps. Otherwise, that is to say, that if they do not act and report back this Court would deem it that they were in complicity with the suspects and shall be



at liberty to contact the Law Society of Kenya for action. How can the legal profession be so desecrated as this and members keep quiet?

13. While on that it is worth noting that the annexures to the Supporting Affidavit of one Peter Simatwa having appeared to have been made pursuant to an oath taken before on Aggrey Kidiavai Advocate, although they clearly show that the signature and stamp of the said advocate was taken from a different document cut out and superimposed on the documents to make them appear to have been a serialization of the annexures before a competent authority (Commissioner for Oaths), and in any event they are not in the original, and the Affidavit having been 'sworn' before a totally different Advocate said to be based in Eldoret town, it is clear to me that the oath and serialisation of the documents do no accord with section 5 and 6 of the *Oaths and Statutory Declarations Act*, Chapter 15 of the Laws of Kenya and rule 9 of the *Oaths and Statutory Declarations Rules* as made under section 6 of the Act. I therefore strike the annexures out. It follows that any fact purported to be deposed thereto from and about the documents without proper support by way of properly commissioned exhibits before a Commissioner for Oaths is unsubstantiated and cannot stand.
14. Turning now to the substance or merits of the instant Application, this Court notes that by the Application dated 27/10/2023 which was filed on 01/11/2023 and which is pending Ruling on 22/01/2024, the Applicant sought a number of prayers which he has sought in the instant application. Since they are similar (actually worded the same way in every respect), then this Court shall not determine them at this point. It can only find that by bringing them once again for determination that amounts to an abuse of the process of the Court. For understanding, I will do a comparison of the prayers sought in the two applications so that the Applicant and the public knows that the applicant is now set to abuse the process of the Court.
15. In the Application filed on 01/11/2023 prayer (b) which was for recusal is related and similar to prayer (g) in the instant Application. Prayer (d) is the same as prayer (e) herein. Prayer (e) is the same as prayer (f) herein. Prayer (f) is the same as prayer (g) herein. Prayer (g) is the same as prayer (h) herein. Prayer (h) is the same as prayer (i) herein. Prayer (i) is the same as prayer (j) herein. Prayer (j) is the same as prayer (k) herein. Prayer (k) is prayer (n) herein. I have found in the previous paragraph what all these similar prayers amount to.
16. Moving to the prayers in the instant Application that are not similar to the those in the earlier application, two issue which arise are whether the said prayers can be granted to a party who is not a party in the instant proceedings, and if they are, whether they are merited.
17. I have stated that the Applicant herein has not been enjoined as a party. Thus, can the prayers he seeks he available to a non-party? Except for the one of joinder which, as I stated earlier, is for Ruling on 22/01/2023, the others cannot be granted. They are premature and incompetent. In brief it is the prayer for "removing", "withdrawing" setting aside and vacating the orders of this Court made on 20/11/2023. As for the prayer of "removing into Court" the eviction order issued in Kitale ELC No 36 of 2023 and ELC No 57 of 2011 for staying the execution (sic) in the matters and the one for the Officer Commanding Station Endebess to ensure that Kaitet Tea Estates (1977) Limited is "stayed from executing the eviction order dated 27/01/2023 pending the hearing of this Application inter partes, both are not available to the Applicant for two reasons. One, the eviction order is in respect of execution of a lawful decree of this Court in matters which are concluded. Secondly, the prayer is made in a 'wrong' (meaning different) file and there is no explanation for that. But even if it were to be explained it can never be made in a different file than the file in which it was issued unless in an appellate Court.



18. The prayer for an order for directions that this application be disposed by way of written submissions has been overtaken by events hence I do not make a finding on it. As for the prayer that this Court adheres to the court practice and procedure rules “and the litigants to respect and obey court directions and orders,” it is unmerited since no party apart from the Applicant has not adhered to the court procedures and the law. Further, the insinuation that the Court has not adhered to the court procedures and rules is wild and unsubstantiated. If the Court had done this both the Court of Appeal and the Supreme Court, and even the East African Court of Justice, are just next door: the Applicant should have found his way there and their Lordships and Ladyships could have rendered themselves on the issue appropriately.
19. Either the Applicant is abusing the power of the computer, the legal profession and ultimately the Court, or someone is misusing this man, and this Court cannot watch that go unpunished. Thus, the Deputy Registrar of this Court is directed to give copies of this Ruling and the copies of the two Affidavits together with the annexures thereto to the Office of the Director of Criminal Investigations for the carrying out of investigations into the possible offences committed herein, particularly, since the alterations of the Affidavit sworn on 27/11/2023 or on a later date and the annexures thereto are of a similar pattern of the alterations and actions which were suspected to be criminal in nature in file Kitale Petition No 7 of 2014 which this Court referred to the said office for investigations, and the suspect in that Petition is the same individual mentioned adversely in relation to the possible offences, in the proceedings herein.
20. In Kitale Petition No 7 of 2014, having examined the documents alleged allegedly filed by the party suspected to have committed a number of offences that may have arisen as a result of the actions by the said party, the Court, at page 27 in paragraph (2) noted that possible offences such as making a document without lawful authority, uttering the said document, lying to court, swearing a false affidavit, and defrauding or attempting to defraud the court. This Court has not been informed as to whether investigations ever took place and the result thereof.
21. Now I have before me the same suspect who to me seems to be more bold this time in committing acts which are, in the view of the court criminal yet without any hesitation. In this matter he has gone beyond that to the extent of preparing documents without authority, forging or using advocates’ signatures and stamps as having duly appeared before them for commissioning of documents, altering documents by way of computer misuse, lying to court, uttering false documents before officers in public service, false publications under section 22 of the *Computer Misuse and Cybercrimes Act*, Computer forgery under section 25 of the Act, Identity and impersonation under section 29, Unlawful destruction of electronic messages under Section 36 of the Act, fraudulent use of electronic data under Section 38, and aiding and abetting the commission of an offence under section 42 of the Act. Similarly, the individual is suspected to have committed offences under Regulations 20 (4) and (5) of the *Non-Governmental Organizations and Coordination Act Regulations, 1992*, and even operating without making annual returns for over 12 years.
22. While all the above actions are said to have been going on, the individual is moving around with impunity in the name of assisting poor citizens but in reality, misleading them. Should the investigative agencies close their ears to the report, through this and previous decision of this court, on the commission of these possible offences? Is the office of the Director of Criminal Investigation not empowered and endowed with resources to act fact to help the poor and innocent people from taken advantage of by this individual? Even the learned counsel whose stamps and signatures were used by this individual, and not only in this matter but as it is likely to be, in many others, can they not act to save the profession from desecration? On my part as Judge I have done my part: I have identified



acts which are suspect and need investigation. That is the far I can go. History will judge those who do not act.

23. The upshot is that the Application is an abuse of the process of the Court and is hereby dismissed with costs to all the parties who opposed it. Since the Applicant has deliberately abused the process of this Court, and to deter him from abusing the process of the Court further, I direct that the costs of the instant application be agreed upon or taxed and be paid by him to the affected parties before the inter partes of any application the Applicant may bring in the future, if he so desires.
24. The matter shall be mentioned virtually on 22/01/2024 when the two Advocates whose signatures and stamps appear to have been misused to report to this Court the steps they have taken in remedying the act of the party or people involved in the dirty actions of the misuse of their instruments of legal power.
25. Orders accordingly.

**RULING DATED, SIGNED AND DELIVERED AT KITALE VIA THE ELECTRONIC MAIL THIS
4TH DECEMBER, 2023.**

HON. DR. IUR FRED NYAGAKA

JUDGE, ELC KITALE

